

Councilors-at-Large

Mark A. Oram
Michael H. Ossing
Samantha Perlman
Kathleen D. Robey



Ward Councilors

Ward 1 – Laura J. Wagner
Ward 2 – David Doucette
Ward 3 – J. Christian Dumais
Ward 4 – Teona C. Brown
Ward 5 – John J. Irish
Ward 6 – Sean A. Navin
Ward 7 – Donald R. Landers, Sr.

Council President

Michael H. Ossing

Council Vice-President

Kathleen D. Robey

CITY OF MARLBOROUGH CITY COUNCIL MEETING MINUTES MONDAY, APRIL 25, 2022

The regular meeting of the City Council was held on Monday, April 25, 2022, at 8:00 PM in City Council Chambers, City Hall. City Councilors Present: Ossing, Wagner, Doucette, Dumais, Brown, Irish, Oram, Perlman & Robey. Councilors Absent: Navin & Landers. Meeting adjourned at 9:00 PM.

Motion by Councilor Dumais, seconded by the Chair to adopt the following:

ORDERED: That the Minutes of the City Council meeting, April 11, 2022, **FILE**; adopted.

That the CONTINUED PUBLIC HEARING on the Petition of New Cingular Wireless, PCS, LLC (d/b/a AT&T) for a grant of location for one (1) small cell wireless facility to be located on an existing pole within the public right of way in the vicinity of 241 Forest Street, Order No. 22-1008558A, all were heard who wish to be heard, hearing closed at 8:03 PM, adopted.

Councilors Present: Wagner, Doucette, Dumais, Brown, Irish, Oram, Ossing, Perlman & Robey.

Councilors Absent: Navin & Landers.

Motion by Councilor Brown, seconded by the Chair to adopt the following:

ORDERED: Communication from the Mayor, re: Acceptance of Gikas Lane as a Public Way, Order No. 22-1008553, **FILE**; adopted.

Motion by Councilor Irish, seconded by the Chair to adopt the following:

ORDERED: Under authority of MGL Chapter 44, Section 53A, the City Council hereby **APPROVES** the Grant Acceptance in the amount of \$3,000.00 from the Sudbury, Assabet and Concord Rivers Cooperative (SuAsCo) awarded to the Conservation Commission to be used to control the invasive oriental bittersweet at Ghiloni Park; adopted.

Motion by Councilor Irish, seconded by the Chair to adopt the following:

ORDERED: Under authority of MGL Chapter 44, Section 53A, the City Council hereby **APPROVES** the Grant Acceptance in the amount of \$51,885.00 from the Massachusetts Department of Public Health awarded to the Health Department to be used for clinic staffing, supplies, case investigation and COVID-19 preventative messaging; adopted.

Motion by Councilor Irish, seconded by the Chair to adopt the following:

ORDERED: That the Transfer Request in the amount of \$698,083.18 for the Department of Public Works, which moves funds from various accounts to Electricity (\$652,083.18) to cover the cost of higher usage during COVID-19 and Overtime (\$46,000.00) to cover costs in overtime due to hydrant flushing and water main breaks, referred to the **FINANCE COMMITTEE**; adopted.

	CITY OF MARLBOROUGH BUDGET TRANSFERS --										
	DEPT:	Department of Public Works/Public Facilities					FISCAL YEAR:	2022			
		FROM ACCOUNT:					TO ACCOUNT:				
Available Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:		Available Balance	
\$38,000	\$38,000.00	14003006	52920	Rubbish Collection	\$203,172.10	13032006	52120	Electricity		\$5,418	
	Reason:	Available funds from Credit					Due to increased energy usage as a result of Covid-19				
\$82,633	\$82,000.00	14003006	52925	Curbside Recycling							
	Reason:	Available funds from Credit and Grant									
\$48,122	\$13,700.00	14001101	50660	Assistant City Engineer							
	Reason:	Excess due to prior vacancy									
\$36,922	\$36,922.10	14001101	50700	Senior Engineering Aide							
	Reason:	Excess due to vacancy									
\$68,002	\$24,550.00	14001101	50710	Junior Civil Engineer							
	Reason:	Excess due to vacancy									
\$8,000	\$8,000.00	14001103	51240	Temporary Part-Time							
	Reason:	Excess due to vacancy									
	\$203,172.10	Total			\$203,172.10	Total					

CITY OF MARLBOROUGH BUDGET TRANSFERS --									
	DEPT:	Department of Public Works/Public Facilities				FISCAL YEAR:	2022		
		FROM ACCOUNT:				TO ACCOUNT:			
Available Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Available Balance
\$6,000	\$6,000.00	14001303	51240	Temporary Part-Time	\$82,350.00	13032006	52120	Electricity	\$5,418
	Reason:	Excess due to no part time help used				Due to increased energy usage as a result of Covid-19			
\$55,416	\$20,150.00	14001403	50745	Equipment Operator					
	Reason:	Excess due to prior vacancy							
\$212,314	\$44,200.00	14001503	50740	Equipment Operator					
	Reason:	Excess due to vacancy							
\$24,602	\$7,000.00	14001503	51240	Temporary Part-Time					
	Reason:	Excess due to less summer help in summer 2021							
\$5,000	\$5,000.00	14003003	51470	Interim Foreman					
	Reason:	Excess due to vacancy at East Plant SMEO							
	\$82,350.00	Total			\$82,350.00	Total			

	CITY OF MARLBOROUGH										
	BUDGET TRANSFERS --										
	DEPT:	Department of Public Works/Public Facilities					FISCAL YEAR:		2022		
		FROM ACCOUNT:					TO ACCOUNT:				
Available											Available
Balance	Amount	Org Code	Object	Account Description:		Amount	Org Code	Object	Account Description:		Balance
\$16,289	\$16,289.40	60081001	50750	Equipment Operator		\$39,416.08	13032006	52120	Electricity		\$5,418
	Reason:	Excess due to vacancy					Due to increased energy usage as a result of Covid-19				
\$13,018	\$2,500.00	60085001	50750	Equipment Operator							
	Reason:	Excess due to vacancy									
\$71,872	\$14,000.00	60085001	50850	Treatment Plant Op							
	Reason:	Excess due to prior vacancy									
\$6,626	\$6,626.68	11920001	50291	Asst. Comm of Utilities							
	Reason:	Excess due to vacancy									
	\$39,416.08	Total				\$39,416.08	Total				

	CITY OF MARLBOROUGH										
	BUDGET TRANSFERS --										
	DEPT:	Department of Public Works/Public Facilities					FISCAL YEAR:	2022			
		FROM ACCOUNT:					TO ACCOUNT:				
Available											Available
Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:			Balance
\$65,523	\$35,350.00	11920003	50560	Custodian	\$10,350.00	13032006	52120	Electricity			\$5,418
	Reason:	Excess due to vacancy					Due to increased energy usage as a result of Covid-19				
					\$25,000.00	61090003	51310	Overtime			\$16,871
	Reason:						Due to water main breaks and hydrant flushing				
\$37,795	\$37,795.00	13032001	50291	Asst. Comm of Utilities	\$21,000.00	61090003	51310	Overtime			\$16,871
	Reason:	Excess due to vacancy					Due to water main breaks and hydrant flushing				
					\$16,795.00	13032006	52120	Electricity			\$5,418
	Reason:						Due to increased energy usage as a result of Covid-19				
	\$73,145.00	Total			\$73,145.00	Total					

Motion by Councilor Irish, seconded by the Chair to adopt the following:

Councilor Doucette requested a Suspension of the Rules requested to allow the City Clerk to speak – granted.

ORDERED: That the Transfer Request in the amount of \$44,000.00 for the City Clerk's Office, which moves funds from various accounts to Capital Outlay-Voting Equipment for the purchase of Poll Pads to be used during elections, **APPROVED**; adopted.

CITY OF MARLBOROUGH BUDGET TRANSFERS –									
DEPT: City Clerk/Election					FISCAL YEAR: 2022				
FROM ACCOUNT:					TO ACCOUNT:				
Available Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Available Balance
\$4,038.19	\$3,500.00	11610004	53180	Prof & Tech Services	\$44,000.00	19300006	56300	Voting Equipment	\$0.00
	Reason:	Surplus			Reason:				
\$3,050.00	\$3,000.00	11620002	50141	Clerk					
	Reason:	Vacant position			Reason:				
\$25,687.25	\$17,000.00	11620002	50520	Principal Clerk					
	Reason:	Vacant position			Reason:				
\$4,006.25	\$4,000.00	11620003	51460	Constables					
	Reason:	Surplus			Reason:				
\$1,169.00	\$1,000.00	11620004	53930	Printing					
	Reason:	Surplus			Reason:				
\$10,111.65	\$8,500.00	11620004	53932	Election Programming					
	Reason:	Surplus			Reason:				
\$14,564.00	\$7,000.00	11620006	53871	Poll Workers					
	Reason:	Surplus			Reason:				
	\$44,000.00	Total			\$44,000.00	Total			

Motion by Councilor Irish, seconded by the Chair to adopt the following:

ORDERED: That the Transfer Request in the amount of \$75,000.00 which moves funds from Economic Development to MEDC to replenish the Economic Development Toolbox, **APPROVED**; adopted.

CITY OF MARLBOROUGH BUDGET TRANSFERS --									
DEPT: Mayor					FISCAL YEAR: 2022				
FROM ACCOUNT:					TO ACCOUNT:				
Available Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Available Balance
\$984,934.02	\$75,000.00	27000099	42440	Economic Development	\$75,000.00	11740006	53950	MEDC Funding	\$0.00
	Reason:	To allow the MEDC to continue it's support to small businesses with financial grant incentive programs for FY23							
	\$75,000.00	Total			\$75,000.00	Total			

Motion by Councilor Dumais, seconded by the Chair to adopt the following:

ORDERED: Reappointment of Joseph Bisol to the Council on Aging Board for a 4-year term to expire on May 4, 2026, and the Appointment of Zella Haesche to the Council on Aging Board for a 4-year term to expire on May 4, 2026, referred to the **PERSONNEL COMMITTEE**; adopted.

Motion by Councilor Irish, seconded by the Chair to adopt the following:

ORDERED: That the Proposed Amendment to the City Code, Chapter 125 §6 “Salary Schedule” to amend the salary for the Sealer of Weights and Measures as submitted by the Mayor, referred to **FINANCE COMMITTEE** and **ORDERED ADVERTISED**; adopted.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARLBOROUGH THAT THE CITY CODE OF THE CITY OF MARLBOROUGH, AS AMENDED, BE FURTHER AMENDED BY AMENDING CHAPTER 125, ENTITLED “PERSONNEL,” AS FOLLOWS:

I. By adding to the salary schedule referenced in Section 125-6, the following:

<u>Position</u>	<u>Rate</u>
Sealer of Weights and Measures	Not to Exceed \$25 Per Hour.

II. This ordinance shall supersede and replace any existing rate for said position(s) in the current salary schedule.

Motion by Councilor Irish, seconded by the Chair to adopt the following:

ORDERED: That there being no objection thereto set **MONDAY, MAY 9, 2022**, as date for a **PUBLIC HEARING** for the Proposed FY23 Budget as submitted by Mayor Vigeant in the amount of \$181,260,899.00 which represents a 4.18% increase over the FY 2022 appropriation, referred to **FINANCE COMMITTEE** and **ORDERED ADVERTISE**; adopted.

Motion by Councilor Robey, seconded by the Chair to adopt the following:

ORDERED: That the Communication from the Mayor, re: Veto of City Council Orders 21/22-1008402B-3 & 21/22-1008402A-2, relative to proposed Order to authorize the purchase of 100 Locke Drive and the Transfer Request in the amount of \$5,092,666.66, **POSTPONED ACTION UNTIL MAY 9, 2022, AND THE SOLICITOR TO PROVIDE WRITTEN CLARIFICATION REGARDING THE AMBIGUITY OF THE ORDERS AND SUGGESTED WORDING TO RESOLVE THE AMBIGUITY FOR THE MAY 9, 2022, CITY COUNCIL MEETING**; adopted.

Motion by Councilor Robey, seconded by the Chair to adopt the following:

ORDERED: That the Communication from Solicitor Jason Grossfield, re: Request for Executive Session to discuss litigation strategy relative to WP Marlborough MA Owner, LLC v. Marlborough City Council, **MOVED TO AFTER AGENDA ITEM #25**; adopted.

Motion by Councilor Brown, seconded by the Chair to adopt the following:

ORDERED: That there being no objection thereto set **MONDAY MAY 9, 2022**, as the **DATE FOR PUBLIC HEARING**, on the Petition from Massachusetts Electric and Verizon New England, to install a new pole and remove the old pole and install underground cable for city work around the pump station on Cullinane Drive, referred to the **PUBLIC SERVICES COMMITTEE**; adopted.

Motion by Councilor Brown, seconded by the Chair to adopt the following:

ORDERED: That the Application for Taxi/Livery License from Nathan Sebuliba d/b/a Indelible Homecare, Inc., to operate a Livery Service with one vehicle, 97 Neil Street, referred to **PUBLIC SERVICES COMMITTEE**; adopted.

Motion by Councilor Robey, seconded by the Chair to adopt the following:

ORDERED: That the Communication from Attorney Brian Falk on behalf of Post Road Realty, LLC, re: Request to modify the bedroom mix at the Green District, Simarano Drive, **FILE IN ADDITION THE CITY COUNCIL ACKNOWLEDGES THAT THIS IS A MINOR CHANGE WHICH THE BUILDING COMMISSIONER CAN APPROVE**; adopted.

Motion by Councilor Doucette, seconded by the Chair to adopt the following:

ORDERED: That the Minutes of following Boards, Commissions and Committees, **FILE**; adopted.

- a) School Committee, March 8, 2022 & March 22, 2022.
- b) Conservation Commission, March 17, 2022.
- c) Planning Board, March 14, 2022.

Motion by Councilor Doucette, seconded by the Chair to adopt the following:

ORDERED: That the following CLAIMS, referred to the **LEGAL DEPARTMENT**; adopted.

- a) John Costanza, 99A Parmenter Road, Framingham, pothole or other road defect.
- b) Dakota Grieco, 77 Tremont Street, #2, pothole or other road defect.

Reports of Committees:

Councilor Irish reported the following out of the Finance Committee:

**City Council Finance Committee
Thursday, April 14, 2022
Minutes and Report**

This meeting convened at 6:30 PM and was held in the City Council Chamber and open to the public. The meeting was televised on WMCT-TV (Comcast Channel 8) or Verizon/Fios Channel 34) and was available for viewing using the link under the Meeting Videos tab on the city's website, home page (www.marlbrough-ma.gov).

Voting members present: Chair Irish, Councilors Dumais, Perlman, Oram and Brown.

Non-Voting members present: Councilors Ossing, Wagner, Doucette, Robey, Landers. Councilor Navin (arrived at 7:30 PM).

Others Present: Mayor Vigeant and managers were present to address the following Orders.

1. 03-14-22 – Order No. 22-1008551: Statement of Interest for Marlborough Public Schools to the Massachusetts School Building Authority (MSBA) relative to the RICHER SCHOOL.

School officials discussed the statement of interest and the importance of planning for future space needs. The statement is an annual requirement and if not successful this year will be submitted again.

Reports of Committee Continued:

On a motion by Councilor Dumais, seconded by the Chair, the committee voted 5-0 to recommend approval of the statement of interest under suspension of the rules on 4/25/22.

- 2. 04-11-22 – Order No. 22-1008567: MEDC FY2023 Operating Budget in the amount of \$589,691.00.**

Meredith Harris and Linda Martins addressed the MEDC budget with councilors. It was noted the Tool Box funds were not included in the operational budget and will be funded by a future transfer to be submitted by the Mayor.

On a motion by Councilor Dumais, seconded by the Chair, the committee voted 5-0 to recommend approval of the MEDC FY2023 Operating Budget in the amount of \$589,691.00.

- 3. 3-14-22 – Order No. 22-1008536 CAPITAL IMPROVEMENT PLAN: BONDS AND TRANSFER REQUEST TOTALING \$19,910,000.00 FROM MAYOR VIGEANT:**

Order No. 22-1008536A: Request for Appropriation of Five Hundred Thousand (\$500,000.00) for the purpose of paying the cost of reconstruction or making extraordinary repairs to the SLIGO HILL WATER TANK. DPW Commissioner Divoll explained funding for the companion \$1M maintenance program for the tanks is being funded by ARPA funds and the program includes all of the city's water tanks. Commissioner Divoll stated in the future a reoccurring budget request will be required to maintain the tanks. This bond will refurbish the Sligo Hill water tank which is in need of extraordinary repairs. Councilor Robey was concerned that ARPA funds were not being used to fund the entire project and reminded councilors that the bond requires eight votes.

On motion by Councilor Oram, seconded by the Chair, the committee voted 3 in favor, 2 (Dumais & Perlman) opposed (3-2) to recommend approval of the bond. Councilor Irish will ask Mayor Vigeant to forward the City Council a list of the projects being funded by ARPA.

Order No. 22-1008536B: Request for Appropriation in the amount of One Million (\$1,000,000.00) Dollars for the purpose of paying the cost of water main construction or reconstruction.

Commissioner Divoll addressed the water main improvements. Councilor Oram questioned whether ARPA funds were considered in place of this bond; the Mayor replied in the negative.

On a motion by Councilor Oram to approve the bond, seconded by the Chair, the committee voted 1-4 (Chair in favor) Does Not Carry. The Order remains in committee.

Order No. 22-1008536C: Request for appropriation in the amount of Five Million One Hundred Seventy-Five Thousand (5,175,000.00) for the purpose of paying the cost of street construction.

Commissioner Divoll and City Engineer DiPersio addressed the street construction bond.

On a motion by Councilor Oram, seconded by the Chair, the committee voted 5-0 to approve the bond for street construction and reconstruction.

Reports of Committee Continued:

Order No. 22-1008536D: Request for Transfer in the amount of \$1,448,100.00 from Undesignated Fund (Free Cash) to various departmental CAPITAL REQUESTS.

Including the following capital items: fire squad truck, refurbishing pools, Evergreen Cemetery expansion project, school HVAC upgrades, Reservoir Street bump out and Public Works equipment. DPW managers addressed the DPW items in the transfer. The proposed new vehicle, F550 truck with water gate valve, is especially welcome by the DPW to allow staff to have a mechanized means to better manager water gates. It is specialized for use by the Water Department and will not be used for plowing.

On a motion by Councilor Dumais, seconded by the Chair, the committee voted 5-0 to approve the Transfer of \$1,448,100.00 from Undesignated Fund to various departmental requests including the following capital items: fire squad truck, refurbishing pools, Evergreen Cemetery expansion project, school HVAC upgrades, Reservoir Street bump out and Public Works equipment.

Motion made and seconded to adjourn; the meeting adjourned at 8:35 PM.

Councilor Robey reported the following out of the Urban Affairs Committee:

**City Council Urban Affairs Committee
Wednesday, April 20, 2022
Minutes and Report**

This meeting convened at 6:30 PM in the City Council Chamber and was open to the public. The meeting was televised on WMCT-TV (Comcast Channel 8) or Verizon/Fios Channel 34) and available for viewing using the link under the Meeting Videos tab on the city's website, home page (www.marlborough-ma.gov).

Urban Affairs & Housing Committee members present were Chairman Katie Robey, Councilor Doucette, Councilor Navin. and Councilor Wagner (Councilor Landers was absent).

Other councilors present were Councilor Brown, Councilor Oram, and Councilor Ossing.

Others Present: Mr. John Stournaras was there as the Applicant.

Order No. 22-1008542 (X 13-1005456B): Application for a Modification of a Special Permit from 587 Bolton Street, Inc., to allow for outdoor seating, a gazebo, and bar area at 587 Bolton Street.

Mr. Stournaras explained his plan for the property and answered questions clarifying the additional seating would be for seasonal use and the food would come from the restaurant. No outside food would be allowed on the premises. The alcohol would come from the restaurant to the bar area at gazebo and be brought back inside each night. There would be temporary outside washing stations that were approved by Health Dept.

The chair read through the comments from Department Heads and then through the conditions of the draft application for modification of the Special Permit approved in 2013.

Reports of Committee Continued:

Councilor Navin moved to approve the draft Special Permit with the following additions to be added in as the solicitor's office sees fit:

1. The Applicant shall comply with the Conservation Commission Order of Conditions approved April 15, 2021.
2. Additional planting and landscaping and ongoing maintenance around the gazebo and bar area are required to enhance the appearance of this new facility. The Conservation Officer shall approve the plantings and landscaping. This condition shall have a two-year lookback from the date of occupancy.
3. Applicant shall install No Smoking signs at all outdoor spaces where food and/or beverages are served to the public by employees.

Motion was seconded and vote carried 4-0 (Landers absent) to recommend approval of the amended Modification of a Special Permit.

The solicitor's office will try to have this in proper form for the April 25th Council agenda. If it is ready, a Suspension will be asked to vote on it on April 25. If not, then a suspension would be asked to refer this to the solicitor to be ready for the May 9th council meeting

Councilor Doucette moved to adjourn; the motion received a second, and vote carried 4-0. The meeting was adjourned at 7:08 PM.

Motion by Councilor Irish, seconded by the Chair to adopt the following:

Suspension of the Rules requested – granted.

ORDERED: Resolved: Having convened in an open meeting on 04/25/2022, prior to the SOI submission closing date, the City Council of the City of Marlborough in accordance with its charter, by-laws, and ordinances, has voted to authorize the Superintendent to submit to the Massachusetts School Building Authority the Statement of Interest Form dated February 2022 for the Richer Elementary School located at 80 Foley Road, Marlborough, MA 01752 which describes and explains the following deficiencies and the priority category(s) for which an application may be submitted to the Massachusetts School Building Authority in the future;

The District is submitting the Statement of Interest under three priorities:

Priority 2: Elimination of severe overcrowding

Priority 4: Prevention of severe overcrowding expected to result from increased enrollments

Priority 5: Replacement, renovation or modernization of school facility systems, such as roofs, windows, boilers, heating and ventilation systems, to increase energy conservation and decrease energy related costs in a school facility

The Richer Elementary School SOI would address overcrowding at the elementary level as well as capital maintenance concerns at that building. The MSBA and the District's Study Enrollment Certification for the Goodnow Brothers project predicted in 2015 that Marlborough would have 2,260 K-5 students by FY26, and the District's actual K-5 enrollment in FY22 is 2,478 students. Priorities two and four would address this overcrowding in our elementary schools, which has caused non-traditional classroom spaces throughout the District to be used as classrooms. Further, priority five would address Richer Elementary's outdated HVAC and plumbing systems, as well as aged building envelope systems (windows, roof) that require modernization;

and hereby further specifically acknowledges that by submitting this Statement of Interest Form, the Massachusetts School Building Authority in no way guarantees the acceptance or the approval of an application, the awarding of a grant or any other funding commitment from the Massachusetts School Building Authority, or commits the City of Marlborough to filing an application for funding with the Massachusetts School Building Authority.

APPROVED; adopted.

Motion by Councilor Irish, seconded by the Chair to adopt the following:

Suspension of the Rules requested – granted.

ORDERED: That the Proposed Tax Increment Financing (TIF) Agreement with Solmetex, LLC and LPCH 1000 Nickerson L.P., (attached) who will be occupying 65,000 square feet in a building located at 1000 Nickerson Drive, Map 88, Parcel 29 and Parcel 36 (including portions thereof), referred to the **FINANCE COMMITTEE**; adopted.

Suspension of the Rules requested – granted.

Motion by Councilor Robey, seconded by the Chair to adopt the following:

ORDERED That the Communication from Assistant Solicitor Jeremy McManus, re: Application for a Modification of a Special Permit from 587 Bolton Street, Inc., to allow for outdoor seating, a gazebo, and bar area at 587 Bolton Street, in proper legal form, Order No. 22-1008542A, **FILE**; adopted.

Motion by Councilor Robey, seconded by the Chair to adopt the following:

ORDERED

**DECISION ON A MODIFICATION TO A SPECIAL PERMIT
587 BOLTON STREET, INC.**

**DECISION ON A MODIFICATION TO A SPECIAL PERMIT
ORDER NO. 22-1008542B
(X 13-1005456B)**

The City Council of the City of Marlborough hereby **GRANTS** the Application for a Modification to an existing Special Permit granted to 587 Bolton St Inc. to allow for the construction of a covered outdoor seating area with a bar gazebo and a sports area and fire pit location to allow for outdoor seating (the “Use”) on the site at 587 Bolton Street, Marlborough, Massachusetts, as provided in the DECISION and subject to the Findings of Fact and Conditions therein.

FINDINGS OF FACT

1. The Applicant is a duly organized and existing corporation having a business address of 587 Bolton Street, Marlborough, Massachusetts 01752.
2. The Applicant is a tenant of a commercial restaurant located at 587 Bolton Street, Marlborough, Massachusetts, as shown on Assessors Map 30 Parcel 7 (the “Site”). The Site is owned by 587 Bolton Street, LLC with a business address of 19 Westgate Road, Framingham, Massachusetts 01701.
3. The Site is located in the Limited Industrial (LI) Zoning District which requires a Special Permit for the outdoor service of food.
4. On March 9, 2022, the Applicant filed with the City Clerk of the City of Marlborough an application (hereinafter referred to as the “Application”) for a modification of a special permit under Chapter 650 (Zoning) of the Code of the City of Marlborough (hereinafter referred to as the “Zoning Ordinance”), Article VIII, Section 650-57. The Application seeks to modify the special permit granted by the City Council on July 22, 2013 (Council Order No. 13-1005456B, Recorded with the Middlesex South Registry of Deeds at Book 63388 and Page 1) (“July 22, 2013 Special Permit”) authorizing the construction of an attached outdoor deck and to serve food on the same, pursuant to the City Council’s authority under MGL Chapter 40A and the Code of the City of Marlborough with conditions, including hours of operation.

5. In connection with the Application for a Modification to a Special Permit, the Applicant submitted a certified list of abutters, required filing fees and a copy of the approved City of Marlborough Site Plan Permit, "Site Plan Permit, 587 Bolton Street, Bolton Street Tavern #SC-2021-7, Construction of a covered outdoor seating area with a bar gazebo and a sports area and fire pit location to allow for outdoor seating," issued on October 18, 2021 and signed by Tin Htway, Marlborough Building Commissioner, together with Proposed Plan of 587 Bolton Street in Marlborough, Mass. prepared by Ludwig Survey Solutions, LLC, 1498 White Pond Road, Athol, MA 01331, Scott T. Ludwig, Professional Land Surveyor, #48095, dated April 15, 2021, rev. July 14, 2021, attached as **Exhibit #1**.
6. Pursuant to the Rules and Regulations of the City Council of the City of Marlborough and applicable statutes of the Commonwealth of Massachusetts, the City Council established a date for a public hearing on the Application, and the City Clerk for the City of Marlborough caused notice of the same to be advertised and determined that notice of the same was provided to abutters entitled thereto in accordance with applicable regulations and law.
7. The Marlborough City Council, pursuant to Massachusetts General Laws Chapter 40A, opened a public hearing on the Application on April 11, 2022. The public hearing was held in the City Council Chamber, at the Marlborough City Hall, 140 Main Street. The public hearing was closed on April 11, 2022.
8. The Applicant presented testimony at the public hearing detailing the Use, describing its impact upon municipal services, the neighborhood, and traffic, including outlining the proposed expansion of the outside dining and ancillary activities on the Site, and stating that the hours of operation conditioned in the July 22, 2013, Special Permit would be sufficient for the Use.
9. At the Public Hearing, there were no members of the public speaking in opposition to the proposed Modification to the Special Permit.
10. No written comments in favor or in opposition were received regarding the proposed Modification to the Special Permit.
11. The Procedural Findings of Fact specified above supplement those made in the July 22, 2013, Special Permit and are expressly incorporated into this Decision by reference.

**BASED ON THE ABOVE, THE CITY COUNCIL MAKES THE FOLLOWING
FINDINGS AND TAKES THE FOLLOWING ACTIONS:**

- A. The Applicant has complied with the Rules and Regulations promulgated by the Marlborough City Council as they pertain to special permit applications.
- B. The City Council finds the proposed Use of the Site is in harmony with the intent and general purpose of the Zoning Ordinance of the City of Marlborough when subject to appropriate terms and conditions as provided in this Decision, and in the Original Special Permit. The City Council makes these findings subject to the completion and adherence by the Applicant, its successors and/or assigns to the conditions more fully set forth in this Decision and in the July 22, 2013, Special Permit.

- C. The City Council, pursuant to its authority under MGL Chapter 40A and the City of Marlborough Zoning Ordinance, Section 650-17 and Section 650-18(A)(31), and generally Section 650-59, **GRANTS** to the Applicant a Modification to a Special Permit for construction of a covered outdoor seating area with a bar gazebo and a sports area and fire pit location to allow for outdoor seating, as set out on the plans attached as **Exhibit #1**, **SUBJECT TO THE FOLLOWING CONDITIONS**, which conditions shall be binding on the Applicant, its successors and/or assigns:
1. Construction on the Site shall be in accordance with all applicable building codes currently in effect in the City of Marlborough and according to the approved Site Plan Permit, SC 2021-7, 587 Bolton Street, Bolton Street Tavern, Applicant: John Stournaras, 19 Westgate Road, Framingham, MA 01701, issued on October 18, 2021, expires on October 18, 2023, and associated Site Plan prepared by Ludwig Survey Solutions, LLC, 1498 White Pond Road, Athol, MA 01331 dated April 15, 2021, rev: July 14, 2021, prepared for 587 Bolton Street, LLC, 19 Westgate Road, Framingham, Mass. 01701, attached herewith as **Exhibit #1**.
 2. In furtherance of the July 22, 2013, Special Permit, no patron shall be allowed in the Use location, including the covered outdoor seating area with bar gazebo, sports area and fire pit location allowed for outdoor restaurant seating except between the following hours on the following days:

Sunday:	10 AM to 10 PM
Monday:	11 AM to 10 PM
Tuesday:	11 AM to 10 PM
Wednesday:	11 AM to 10 PM
Thursday:	11 AM to 10 PM
Friday:	11 AM to 11 PM
Saturday:	11 AM to 11 PM

The hours listed above shall be subject to review by the Site Plan Review Committee up to one year after the issuance of the certificate of occupancy for the extended outdoor seating and activities area; if the Chief of Police and pertinent ward councilor deem the hours listed above to be unacceptable, the hours of operation shall be subject to further review and revision by the City Council.
 3. All work performed on the Site shall comply with this Decision. No other building or construction or activity shall occur without further modification of this Special Permit.
 4. The service of alcoholic drinks on the Site, including the Use location, shall be subject to prior approval by the Marlborough Licensing Board and the Alcoholic Beverages Control Commission.
 5. Exterior lighting at the Site shall be downward facing and shielded to minimize impacts on neighboring properties and shut off outside of operating hours, except for security lighting.
 6. The Applicant shall comply with the Conservation Commission Order of Conditions approved April 15, 2021.

7. Additional planting and landscaping and ongoing maintenance around the gazebo and bar area are required to enhance the appearance of the new Use location. The Conservation Officer shall approve the plantings and landscaping. This condition shall have a two-year lookback from the date of occupancy, allowing the Conservation Officer to require and approve additional plantings and landscaping as necessary to enhance the appearance of the new Use location.
8. Applicant shall install No Smoking signs at all outdoor spaces where food and/or beverages are served to the public by employees.
9. All other conditions of the July 22, 2013, Special Permit approved by the City Council on July 22, 2013, shall remain in full force and effect, and are incorporated herein by reference as part of this Decision.
10. In accordance with the provisions of Massachusetts General Laws Chapter 40A, Section 11, the Applicant, its successors and/or assigns, at its expense shall record this Special Permit in the Middlesex South Registry of Deeds after the City Clerk has certified that the twenty-day period for appealing this Special Permit has elapsed with no appeal having been filed, and before the Applicant has applied to the Building Commissioner for a building permit. Upon recording, the Applicant shall forthwith provide a copy of the recorded Special Permit to the City Council Office, the Building Department and the City Solicitor's Office.

Yea: 9 – Nay: 0 – Absent: 2

Yea: Wagner, Doucette, Dumais, Brown, Irish, Oram, Ossing, Perlman, & Robey.

Absent: Navin, Landers.

Motion by Councilor Robey, seconded by the Chair to adopt the following:

ORDERED: That the City Council hereby rescinds Order No. 21-1008473 Acceptance of the Coronavirus Local Fiscal Recovery Fund (CLFRF) package in the amount of \$11,835,814.00.

Background: The Mayor submitted a letter dated December 16, 2021, requesting the City Council approve the American Rescue Plan Act of 2021 (ARPA) CLFRF package for \$11,835,814. The Mayor's letter stated these funds can only be used for four broad purposes:

1. Addressing the public health emergency and/or negative economic impacts,
2. Investment in water, sewer or broadband infrastructure,
3. Revenue loss due to the pandemic, and
4. Premium pay for essential workers

The Mayor's letter further states "It is our intent to use the large majority of these funds for investment in water and sewer projects."

The City Council approved the grant request at the December 20, 2021, city council meeting with the understanding that the funds would be used for water/sewer infrastructure projects as stated in the Mayor's letter.

The Department of the Treasury issued the final rule on how the CLFRF funds can be used in 2022 with an effective date of April 1, 2022.

One of the new provisions of the final rule is the ability to use the first \$10 million of CLFRF funds for "general government services." The final rule lists some common examples of "general government services" to include construction of schools and hospitals, road building and maintenance and other infrastructure, health services, general government administration, staff and administrative facilities, environmental remediation, and provision of police, fire and other public safety services (including the purchase of fire and police vehicles).

Based on the new provision on how to spend CLFRF funds, the City Council should vote to rescind Order 21-1008473. The Mayor can then resubmit the \$11,835,814 CLFRF grant and the Mayor and City Council can have a collaborative discussion on how the funds can be used in accordance with the new guidance.

APPROVED; adopted.

Motion by Councilor Dumais, seconded by the Chair to adopt the following:

ORDERED: That the Reappointment of John Usinas to the Disabilities Commission for a 3-year term from date of Council confirmation, **APPROVED;** adopted.

Motion by Councilor Dumais, seconded by the Chair to adopt the following:

ORDERED: That the Reappointment of Wayne Stanley to the Disabilities Commission for a 3-year term from date of Council confirmation, **APPROVED;** adopted.

Motion by Councilor Brown, seconded by the Chair to adopt the following:

ORDERED: That the Application for Renewal of Taxi/Livery License from Katsunori Tanaka d/b/a Global Limousine & Tour Services, to operate a Livery Service (One Vehicle) at 17 Eager Court, **APPROVED;** adopted.

Motion by Councilor Brown, seconded by the Chair to adopt the following:

ORDERED: That the Application for Taxi/Livery License from Josiah Ihechukwu d/b/a ROA Health System, to operate a Livery Service (Two Vehicles) at 43 Bowstring Way, **APPROVED**; adopted.

Motion by Councilor Brown, seconded by the Chair to adopt the following:

ORDERED: BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARLBOROUGH THAT THE CITY CODE OF THE CITY OF MARLBOROUGH, AS AMENDED, BE FURTHER AMENDED BY AMENDING CHAPTER 510, ENTITLED "SEWERS," AS FOLLOWS:

- I. Chapter 510, entitled "Sewers", Section 510-2, entitled "Use of Public Sewers.", subsection (D), is hereby amended to read as follows:

The owners of all houses, buildings or properties used for human occupancy, employment, recreation or other purposes, situated with the City and abutting on any street, alley or right-of-way in which there is now or may in the future be located a public sanitary sewer of the City, are hereby required, at their expense, to install suitable toilet facilities therein and to connect such facilities directly with the proper public sewer in accordance with the provisions of this chapter, within the following time limits:

- (1) Where said public sewer now exists at the time of the effective date of this clause, or is constructed and/or located after said effective date with official notice by the Commissioner that the public sewer is available for connection, the connection shall be completed: (a) prior to transfer of the property, (b) prior to change in use of a structure as set forth in Chapter 650, Zoning, (c) prior to an increase in the sewage design flow applicable to a structure for purposes of Title 5, 310 CMR 15.000, of the State Environmental Code, or (d) upon failure of any system under said Title 5, 310 CMR 15.000, whichever shall occur first.

For purposes of this subsection, the term "transfer" shall mean the conveyance of any interest in real property, with or without consideration, including by deed, lease, or assignment, but excluding: (a) taking a security interest in a property, including but not limited to issuance of a mortgage; (b) refinancing a mortgage or similar instrument, whether or not the identity of the lender remains the same; (c) a change in the form of ownership among the same owners, such as placing the property within a family trust of which the owners are the beneficiaries, or changing the proportionate interests among a group of owners or beneficiaries; (d) adding or deleting a spouse as an owner or beneficiary; or a transfer between spouses during life, outright or in trust; or the death of a spouse; and (e) the appointment of or a change in a guardian, conservator, or trustee.

An exemption from the connection requirement in this section may only be granted upon application to the Board of Health, and with the recommendation of the City Engineer for reasons of: (a) extraordinary site conditions that prohibit or severely limit the feasibility of connection to such public sewer, provided that the exemption shall apply only until such incapacity is removed and subject to a private disposal system meeting all applicable requirements and any other conditions imposed by the board; (b) an escrow or other acceptable agreement is in place requiring the connection be completed within six (6) months after a property transfer; or (c) for a period of five years from the date of installation of a new or replacement private disposal system which fully complies with Title 5, provided that the exemption shall expire upon the failure of any such system under said Title 5.

APPROVED.

First Reading, suspended; Second Reading, adopted; Passage to Enroll, adopted; Passage to Ordain; adopted. No objection to passage in one evening.

Motion by Councilor Dumais, seconded by the Chair to adopt the following:

ORDERED: That the Reappointment of Catherine Usinas to the Disabilities Commission for a 3-year term from date of Council confirmation, **APPROVED**; adopted.

ORDERED That the Marlborough City Council meet in Executive Session under Purpose 3 of the Open Meeting Law, MGL Chapter 30A §21(a)(3) to “discuss strategy with respect to litigation if an open meeting may have a detrimental effect on the litigating position of the public body” regarding the pending matter, WP Marlborough MA Owner, LLC v. Marlborough City Council (Land Court No. 21 MISC 000451), as the chair hereby declares that discussion in an open session may have a detrimental effect on the City and the City Council’s litigating position.

The City Council will not re-convene in open session after the Executive Session.

APPROVED; adopted.

Yea: 9 – Nay: 0 – Absent: 2

Yea: Wagner, Doucette, Dumais, Brown, Irish, Oram, Ossing, Perlman, & Robey.

Absent: Navin & Landers.

Motion by Councilor Dumais, seconded by the Chair to adopt the following:

ORDERED There being no further business, the regular meeting of the City Council is herewith adjourned at 9:00 PM; adopted.